

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**The Development of Operational,
Technical and Spectrum Requirements
For Meeting Federal, State and Local
Public Safety Agency Communication
Requirements Through the Year 2010**

WT Docket No. 96-86

**Establishment of Rules and Requirements
For Priority Access Service**

To: The Commission

**REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits the following Reply Comments regarding Comments filed by other participants in response to the Second Notice of Proposed Rule Making released in the above-captioned matter on October 24, 1997.^{1/}

^{1/} 62 Fed. Reg. 60,199 (Nov. 7, 1997). By *Order* dated December 19, 1997, the Commission extended the deadline for filing Reply Comments in this matter from January 12, 1998 to January 26, 1998.

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I. REPLY COMMENTS

1. In its Comments, API urged the Commission to conclude that petroleum and natural gas companies and other non-governmental entities charged with public safety responsibilities are eligible under the plain language of the Balanced Budget Act of 1997 to use the new interoperability channels in emergency situations (e.g., oil spill containment and cleanup). Accordingly, API recommended that the Commission designate -- as part of the "national plan" regarding the new allocation -- at least twenty voice interoperability channel pairs for use on a co-primary basis by non-governmental entities that perform public safety functions. API further argued that once a private entity has established its eligibility and obtained its authorization from the Commission, it should not be required to obtain approval from any party prior to using its authorized channels in an emergency situation.

2. API is pleased to find considerable support in the comments of other parties -- including traditional public safety groups -- for the use of interoperability channels by non-governmental entities under certain circumstances. As discussed below, however, API disagrees with those commenters who seek to unduly limit the number of channels available to non-governmental users or to prevent such users from licensing the interoperability channels in their own name. Additionally, API supports the proposal of several commenting parties that certain non-governmental entities should be eligible to participate in the priority access program.

A. Non-Governmental "Public Service" Entities Should Be Eligible to License at Least 20 of the Interoperability Channels for Use in Emergency Situations

3. Recognizing that private entities such as pipelines and utilities often perform important public safety functions, many commenting parties supported the Commission's proposal to allow such entities to utilize interoperability channels from the new allocation. For instance, the Federal Law Enforcement Wireless Users Group ("FLEWUG") stated that "some emergencies require interoperability with government entities and non-governmental organizations whose primary mission is not public safety, such as railroads and organizations that transport petroleum products." (Comments of FLEWUG at 14). See also Comments of the American Association of State Highway and Transportation Officials at 3 (private services that provide unique public safety support operations should be allowed to intercommunicate directly through mutual aid or interoperability channels); Comments of the American Water Works Association at 2 (the Commission should set aside spectrum for communications between public safety entities, water utilities and other components of the nation's critical infrastructure such as power, pipelines and railroads); Comments of the National Public Safety Telecommunications Council ("NPSTC") at ¶¶ 38-39 (authorized non-governmental entities which provide essential public safety services should be eligible to use the new public safety spectrum); Comments of the New York State Police at 4 (there should be a mechanism for authorizing non-governmental use of public safety channels).

4. API agrees with those in the public safety community who argue that a significant portion of the new 24 MHz allocation should be reserved for general use by public safety agencies and that only about 2 or 2.5 MHz should be designated for interoperability communications.^{2/} Several commenters, however, seek to unduly restrict either the total amount of interoperability spectrum and/or the number of interoperability channels that would be available to non-governmental entities. The California Public-Safety Radio Association ("CPRA") and Motorola, Inc., for example, advocate the designation of no more than about ten voice channels in the 746-806 MHz band for interoperability or mutual aid.^{3/} Other parties propose interoperability channel plans which would allow non-governmental public service providers to have access to only a handful of those channels designated for interoperability.^{4/} Moreover, some commenters believe that, while non-governmental entities should be permitted to use interoperability channels in certain circumstances, all licenses in the public safety services should be held only by governmental agencies.^{5/}

^{2/} See, e.g., Comments of the Association of Public-Safety Communications Officials-International ("APCO") at 11; Comments of the National League of Cities, *et al.* at 7; Comments of NPSTC at Appendix A.

^{3/} Comments of CPRA at 2; Comments of Motorola, Inc. at 10.

^{4/} See Comments of NPSTC at ¶ 23 and Appendix A; Comments of the State of Florida at 2-3.

^{5/} Comments of NPSTC at ¶ 39; Comments of the New York State Police at 4; Comments of APCO at n.6.

5. The foregoing proposals are at odds with the Commission's tentative conclusions that "all public safety service providers should be eligible to use all of the interoperability channels" and that non-governmental users should not be treated as "guest entities" on the new spectrum. *Second Notice of Proposed Rule Making* (hereinafter, *Second Notice*), WT Docket No. 96-86, at ¶¶ 88 and 91. Further, the adoption of these proposals would undermine, rather than promote, the goals underlying the provisions of the Balanced Budget Act of 1997 which mandate the new public safety allocation and define eligibility for this spectrum. As API explained in its Comments, authorized non-governmental entities who seek to use the new spectrum primarily for the provision of public safety services are eligible under the plain language of the statute. (Comments of API at 7-8). So long as there are carefully-derived procedures for determining whether a non-governmental entity is eligible in the first instance to utilize the new interoperability channels^{§/}, such an entity should be permitted -- like all other eligible parties -- to hold a license in its own name for one or more of these channels. Without the control and flexibility accorded by a valid FCC authorization, the use of the new spectrum by non-governmental entities during an emergency could be inhibited or delayed, with potentially serious consequences to human life, health, safety or property.

^{§/} APCO argued, in this regard, that regional planning committees should be responsible for determining whether an entity qualifies as a "public safety service provider." (Comments of APCO at 16.) API agrees that individual eligibility decisions should be made at the state, local or regional level, provided that: (1) clear guidelines for making these determinations are set forth in the national plan; and (2) there is a mechanism by which entities deemed ineligible can challenge the adverse determination.

6. Additionally, to fulfill the Commission's vision of seamless interoperability between and among governmental agencies, as well as private entities charged with public safety responsibilities, it is critical that non-governmental entities have access, on a co-primary basis with governmental agencies, to a significant number of the new channels designated for voice interoperability (i.e., at least 20). In a large scale emergency such as a natural disaster, a wide range of parties, both public and private, typically need to work together to respond to the situation in a manner that best serves and protects the public. If, as some commenters suggested, only ten channels are designated for voice interoperability and only a small subset of these channels is made available to non-governmental users, many private parties likely will find themselves unable to effectively communicate and, thereby, coordinate their efforts with governmental agencies and other participants at a time when such coordination is of foremost importance. Accordingly, the Commission must ensure that pipelines, utilities and other private parties which typically play an important role in responding to emergencies have access to an adequate number of interoperability channels.

B. Priority Access Service Should be Available to Non-Governmental Entities With Public Safety Responsibilities

7. The Commission has proposed to create a mechanism for public safety providers to obtain priority access to Commercial Mobile Radio Service systems in emergency situations. *Second Notice* at ¶¶ 172-227. Several parties argued in their

Comments that, if such a program is implemented, non-governmental public safety providers such as utilities and pipelines should be permitted to participate (i.e., to secure a level of priority within the system). See Comments of the American Water Works Association at 3; Comments of Florida Power and Light Company at 3-5; Comments of Nextel Communications, Inc. ("Nextel") at 8; Comments of UTC at 11-13.

8. API agrees with these commenters that the inclusion of private "critical infrastructure" entities in the priority access program would be warranted and in the public interest. Although such entities typically utilize private radio systems during emergencies (due to enhanced reliability and control), private radio spectrum has become increasingly congested in many areas during recent years. Rather than seeking to alleviate this problem by allocating additional spectrum for private users, the Commission generally has been initiating proceedings to redesignate existing private spectrum for assignment to commercial users through competitive bidding.^{2/} As a result, securing priority access to commercial systems may, in some circumstances, be the only way for a non-governmental public safety provider to obtain adequate and reliable coverage during an emergency.

^{2/} See, e.g., Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Second Report and Order*, 1997 FCC LEXIS 3630 (July 10, 1997); In the Matter of Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97-81, *Notice of Proposed Rule Making*, 1997 FCC LEXIS 1065 (Feb. 27, 1997).

9. As UTC suggested in its Comments, the Commission should conform the protection levels for priority access to those established in the Telecommunications Service Priority system. Specifically, most utility and pipeline communications should be protected under level 3 (Public Health, Safety and Maintenance of Law and Order), while those communications relating to the "viability or reconstruction of the basic infrastructure in an emergency area" should be protected under level 2 (National Security Posture and U.S. Population Attack Warning). (Comments of UTC at 11-12.) In this way, quasi-public safety entities that are excluded from using the bulk of the new allocation in the 746-806 MHz band will at least have an avenue for meeting their emergency communications requirements in instances where private spectrum is unavailable or insufficient.

C. The Use of Public Safety Spectrum by Commercial Providers Would Be Potentially Problematic

10. Nextel argued in its Comments that the Commission should allow commercial entities to provide communications services to public safety providers on the newly allocated public safety spectrum. (Comments of Nextel at 5-6). Presumably, Nextel is referring to general use public safety spectrum, as well as interoperability channels. While API agrees that there may be some benefits to such permissive and flexible use of the new public safety allocation, it urges the Commission to exercise extreme caution in determining whether to approve Nextel's proposal. Authorizing

commercial use of public safety spectrum would raise a number of complex questions, e.g. -- who would be responsible for determining which commercial entity/ies would be permitted to operate on public safety channels?; how would a limited amount of public safety spectrum be assigned or divided up among competing commercial providers?; do commercial entities intend to operate dedicated public safety equipment and systems for a fee structure, or do they seek to provide public safety services as part of an overall commercial service?; would commercial providers be permitted to use public safety spectrum for non-public safety purposes at times when the spectrum would otherwise be lying idle?; and, would the realization of profits from services offered on public safety spectrum be consistent with congressional intent underlying the Balanced Budget Act of 1997? In light of these and other difficulties that undoubtedly would arise, API has serious concerns about Nextel's proposal.

II. CONCLUSION

11. To acknowledge and facilitate the critical public safety role played by pipelines, utilities and other private entities, API urges the Commission to (1) allocate at least 20 voice interoperability channels for co-primary use by governmental and private public safety service providers; (2) allow all eligible entities for the interoperability channels to hold licenses for these channels; and (3) include non-governmental public safety providers among those eligible to obtain priority access service. API also

recommends that the Commission carefully consider all of the issues and potential implications before allowing commercial providers to offer service on public safety spectrum.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully urges the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

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